Editor's Note: Reconsideration denied by Order issued July 15, 1997.

ST. JAMES'S VILLAGE, INC.

IBLA 96-437 Decided March 28, 1997

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, dismissing as untimely an Appeal from issuance of a geothermal lease. N-52313.

Dismissal of Appeal reversed, Decision to issue lease vacated and remanded.

1. Appeals: Generally--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Timely Filing

   A document that challenges a BLM decision may be a notice of appeal even if it is not styled as such. A decision dismissing an appeal as untimely will be reversed where it appears that BLM issued the decision without notice to a party adversely affected, without adjudicating a protest previously filed by that party, and that a letter of objection was filed by the protester within 30 days of actual notice of the decision.

2. Appeals: Generally--Rules of Practice: Protests

   The filing of a timely protest suspends the authority of BLM to act upon the matter until the protest has been ruled upon. A decision to issue a geothermal resources lease without adjudication of the protest filed by the adversely affected owner of the surface estate will be vacated and remanded for adjudication of the protest prior to adjudication of the lease application.

APPEARANCES: John Frankovich, Esq. and Miranda M. Du, Esq., Reno, Nevada, for Appellant; John Payne, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management; Kelly W. Bixby, Esq., Los Angeles, California, for lessees.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This Appeal has been brought by St. James's Village, Inc., from a Decision of the Nevada State Office, Bureau of Land Management (BLM), issuing a geothermal resources lease of certain lands to Zonal Corporation on May 17, 1995. St. James's Village is the owner of the surface of certain lands within the leased area. St. James's Village appealed the lease issuance by letter dated June 11, 1996, on a variety of substantive grounds, noting that it had filed a protest of the lease application several years before lease issuance and that BLM had failed to either adjudicate the protest or notify Appellant of lease issuance. A petition requesting a stay of the effect of the Decision issuing the lease accompanied the Appeal. A stay was granted by Order of this Board dated September 18, 1996.

On December 1, 1989, Zonal Corporation filed an offer to lease geothermal resources in approximately 2,347 acres of lands in T. 17 N., Rs. 19 and 20 E., Mount Diablo Meridian (MDM), Nevada. The offer identified the United States Forest Service (FS) as the surface managing agency for the lands described in the offer. However, included in the lease offer was sec. 14, T. 17 N., R. 19 E., which had been patented subject to a reservation of geothermal resources. By letter dated January 16, 1990, BLM notified FS of the offer to lease and requested that FS notify it of any objections it had or special stipulations it required. In a letter dated September 30, 1992, FS enclosed a Decision Notice/Finding of No Significant Impact in which it consented in part to the leasing of national forest lands described in the lease offer while withholding its consent on certain lands. The FS Decision Notice expressly specified that it applied only to FS lands. The FS noted in a follow-up letter to BLM dated December 16, 1992, that sec. 14, T. 17 N., R. 19 E., MDM, had private surface/Federal mineral estate status and indicated it had no recommendations for lease stipulations for the split estate lands.

Appellant's predecessor-in-interest protested the proposed issuance of geothermal resources lease N-52313 in a May 8, 1991, letter to BLM, asserting that it was in the process of developing the land for residential use and that much of the area was already in residential use. 1/ It also

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1/ Appellant is the successor to National Land Corporation which actually filed the protest. In a Feb. 18, 1997, filing with the Board, counsel for the lessee has opposed the stay previously granted and requested expedited review of this Appeal. In opposing the stay, Respondent asserts that the initial filer of the protest no longer exists as a result of bankruptcy proceedings. Respondent asserts that Appellant lacks standing to maintain the protest of its predecessor-in-interest. We reject this challenge. Since the owner of the surface estate has protested leasing of the geothermal resources, we find that the current surface owner as successor-in-interest has standing to appeal lease issuance. It is well established that an assignee pursuant to an unapproved assignment has standing to appeal decisions adverse to its interests. Uno Broadcasting Corp., 120 IBLA 380, 382 (1991); Tenneco Oil Co., 63 IBLA 339, 341 (1982). In

contended that the water resources in the area were fully allocated and in critical supply, thus any development with the potential to jeopardize the available quality and quantity of groundwater could not be construed to be in the "public interest" as required by 43 C.F.R. § 3201.1-1(a). The protest requested that the lease offer be rejected or that sec. 14 be withdrawn from leasing. The BLM never responded to this protest.

[1] The decision to issue the lease was made on March 30, 1995; the lease was issued to Zonal Corporation effective June 1, 1995. Appellant received no notification of either the decision to lease or of the lease issuance. It is uncertain when Appellant first learned of the lease issuance. In a March 25, 1996, letter to the Regional Solicitor, Appellant states that it had recently learned of the lease issuance by chance. The record shows that counsel for Appellant knew of the lease issuance by March 11, 1996. 2/ The appeal was dismissed as untimely by BLM Decision dated July 22, 1996. 3/ In dismissing the appeal, BLM held that Appellant became aware of the lease issuance by the time of a March 25, 1996, letter from counsel for Appellant addressed to the Regional Solicitor. Since the June 11, 1996, Notice of Appeal was not filed with BLM within 30 days thereafter, BLM dismissed the appeal as untimely. The BLM Decision does not, however, address the fact that a copy of the March 25 letter objecting to issuance of the lease as being in violation of Appellant's rights and various substantive legal requirements was sent to the same BLM official who subsequently issued the Decision dismissing the appeal and is found in the case file. We find that this document itself qualifies as a timely appeal of the leasing decision in the absence of a determination by BLM to reconsider its action. The Board does not require that a document

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fn. 1 (continued)
view of the impact of this case on the issued lease, the Motion for Expedited review is granted and we have advanced this case on our docket for decision.

We note that shortly prior to issuance of this Decision, counsel for St. James's Village and for lessee advised the Board that they are in settlement negotiations and requested that we delay our Decision in this Appeal. We granted the earlier Motion to Expedite review of this case because we determined the Motion to be well founded and consider a prompt decision to be in the public interest. After having reviewed the merits of this Appeal, we deny the Motion to delay our Decision as untimely filed.

2/ An affidavit from Miranda Du, counsel for St. James's Village, states that she met with personnel from the Nevada State Office on Mar. 11, 1996, to inquire about the issuance of the Record of Decision dated Mar. 30, 1995, in which BLM accepted geothermal resources lease application N-52313.

3/ When a notice of appeal is filed more than 30 days after service of the decision and after the lapse of the 10-day grace period, the relevant regulation provides that the notice of appeal will not be considered and the case will be closed by the official from whose decision the appeal is taken. 43 C.F.R. § 4.411(c).

be labeled a notice of appeal or even use the word appeal. Arnell Oil Co., 95 IBLA 311, 318 (1987); Goldie Skodras, 72 IBLA 120 (1983). A document may be a notice of appeal if it challenges a BLM decision. See Thana Conk, 114 IBLA 263, 273 (1990); Buck Wilson, 89 IBLA 143, 145 (1985). The March 25, 1996, letter from counsel for Appellant expressed a number of objections to BLM's decision to issue lease N-52313, including BLM's failure to notify Appellant of its decision to issue the lease, as well as accusations of failure to comply with the Geothermal Steam Act of 1970 and the National Environmental Policy Act. The March 25, 1996, letter clearly challenges the legality of the BLM Decision. Therefore, the March 25, 1996, letter is a notice of appeal which was filed within 30 days of actual notice of the BLM action. Accordingly, the BLM Decision dismissing the Appeal is reversed.

[2] We next turn to the question of the effect of BLM's failure to consider Appellant's protest of its decision to issue geothermal resources lease N-52313. Appellant is the surface owner of sec. 14, however, its protest was directed to the entire geothermal lease application to the extent it may impact the quality and quantity of groundwater. Departmental regulations governing protests and appeals provide for the filing of a protest "by any person to any action proposed to be taken in any proceeding before the Bureau." 43 C.F.R. § 4.450-2. This was accomplished in this case by the filing of a timely protest by the owner of the surface estate in sec. 14. Denial of a protest constitutes a BLM decision from which an "adversely affected" party "shall have a right to appeal to the Board." 43 C.F.R. § 4.410(a). Consequently, Appellant had a right to appeal from denial of its protest. Sierra Club, Oregon Chapter, 87 IBLA 1, 6 (1985). It is well settled that BLM may not proceed with an action being protested without first adjudicating the protest subject to the right of appeal by any party adversely affected by that adjudication. California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). In explaining the basis for this holding, we stated:

> The argument of the Regional Solicitor, however, appears to be premised upon the assumption that action which is being protested may nonetheless proceed in the face of the protest. Such is not the case. The applicable regulation clearly states, "a decision will not be effective during the time in which a person adversely affected may file a notice of appeal * * *." 43 CFR 4.21(a). We have noted above that an appeal will lie from the dismissal of a protest. Logic requires that inasmuch as the appeal from the dismissal of the protest would suspend the action being protested, the pendency of the protest should ordinarily prevent the State Office from going forward with the action until ruling upon the protest.

> This procedure works no great hardship upon the State Office, since the State Office is in total control of the manner and speed in which the protest will be handled. And, as regards the subsequent right of appeal to the Board, if matters of a truly emergency nature arise, the State Office may always petition the Board, pursuant to 43 CFR 4.21(a), to place the decision appealed from into effect during the pendency of the appeal. [4/]

30 IBLA at 385.

This principle has been upheld in a number of different cases:

> [T]he filing of a protest generally suspends the authority of the State Office to act upon a matter until the protest has been ruled upon. California Association of Four Wheel Drive Clubs, supra. Further, action is additionally suspended after a ruling on a protest for the period of time in which a person adversely affected may file a notice of appeal therefrom. D. E. Pack, 31 IBLA 283 (1977).

Duncan Miller (On Reconsideration), 39 IBLA 312, 316 (1979); see Petrol Resources Corp., 65 IBLA 104, 108 (1982). It is improper to issue a lease in response to an application which is subject to a protest prior to final adjudication of the protest. Sierra Club, Oregon Chapter, 87 IBLA at 7; Sierra Club Legal Defense Fund, Inc., 84 IBLA 311, 319, 92 Interior Dec. 37, 41-42 (1985); D.E. Pack, supra. Further, a lease issued in this manner is subject to cancellation in the event the protest is ultimately sustained. Sierra Club, Oregon Chapter, 87 IBLA at 7. We therefore vacate BLM's Decision issuing geothermal resources lease N-52313 and remand the case to BLM to adjudicate Appellant's protest prior to determining whether to issue the lease for some or all of the lands currently described in the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision

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4/ The language of the regulation at 43 C.F.R. § 4.21(a) in effect at the time provided that the effect of decisions was stayed pending a decision on appeal by the Board unless the decision was put into effect by the Board in the interim. This regulation was subsequently modified to its present form providing that decisions are stayed during the period in which adversely affected parties may file an appeal and petition for a stay. Thereafter, BLM decisions are stayed during a 45-day period for review of the stay petition and for the duration of any stay order issued by the Board. 43 C.F.R. § 4.21(a), 58 Fed. Reg. 4942-43 (Jan. 19, 1993).

dismissing the Appeal is reversed and the Decision issuing the lease is vacated and remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge